

| |
|------------------------------|
| SENTENCING COMMISSION |
|------------------------------|

| |
|----------------|
| MINUTES |
|----------------|

| | |
|-------------------|--------------------------------------|
| Committee: | SENTENCING COMMISSION MEETING |
|-------------------|--------------------------------------|

| | | | | | |
|--------------|-------------------------|--------------|----------------|---------------|---|
| Date: | Wednesday, July 6, 2005 | Time: | 12:00pm-2:00pm | Place: | State Capitol Complex East Wing, Beehive Room |
|--------------|-------------------------|--------------|----------------|---------------|---|

| | |
|------------------------|---|
| Members Present | Sheriff Phil Barney, Senator Gregory Bell, Paul Boyden, Judge Terry Christiansen, K.S. Cornaby, Scott Daniels, John Hill, Judge Kimberly Hornak, Randy Kester, Dan Maldonado, Jim Marchel, Brian Namba, Judge Gregory K. Orme, Chief Ed Rhoades, Mike Sibbett, Sy Snarr |
|------------------------|---|

| | |
|------------------------|--|
| Members Excused | Judge Jeffrey Burbank, Scott Carver, Michele Christiansen, Calvin Clegg, Senator Mike Dmitrich, Marlene Gonzalez, Judge Paul Maughan, Kathy Reimherr, Rep. Mike Thompson, Kirk Torgenson |
|------------------------|--|

| | |
|--------------|------------------------------|
| Staff | Jo Lynn Kruse, Tom Patterson |
|--------------|------------------------------|

| | |
|-----------------|--|
| Visitors | Cliff Butter, Bill Greer, Chris Mitchell |
|-----------------|--|

| | |
|---------------------|--|
| Agenda Item: | Welcome and Approval of Minutes |
|---------------------|--|

| | |
|--------|--|
| Notes: | Kay Cornaby welcomed everyone and called for a motion to approve the May minutes. Judge Orme made the motion to approve the May minutes with the following amendment on restitution: Kevin Olsen, assistant attorney general, briefed the commission regarding a case where a Utah debtor successfully argued in bankruptcy court that his restitution obligation was a dischargeable civil debt rather than a non-dischargeable criminal penalty. The case is now on appeal. The commission is concerned about the implications of such a ruling, but deferred action pending exhaustion of the appeals process. Paul Boyden seconded the motion and it passed unanimously . |
|--------|--|

| | |
|---------------------|---|
| Agenda Item: | Recognition of Departing Members |
|---------------------|---|

| | |
|--------|--|
| Notes: | The commission recognized departing members Mike Sibbett, Blake Chard and G. Fred Metos. |
|--------|--|

| | |
|---------------------|------------------------------------|
| Agenda Item: | Introduction of New Members |
|---------------------|------------------------------------|

| | |
|--------|---|
| Notes: | Kay Cornaby introduced new members, Dan Maldonado (interim replacement for Blake Chard), Randy Kester (appointed by the Utah Bar) and Representative Duane Bordeaux (appointed by Speaker Greg Curtis). |
|--------|---|

| Agenda Item: | Review of Adult Guideline Modifications per Annual Meeting Determination |
|--------------|--|
| Notes: | <p>The 2005 Adult Sentencing and Release Guidelines include no changes to Form 2 (Sex Offender Matrix), or Form 3 (Aggravating and Mitigating Circumstances Associated with Mandatory Imprisonment Sentences).</p> <p>Form 1 (General Matrix), is revised to include two additional Crime Category columns. Column “T” is now “2nd Degree Possession” and Column “K” is “3rd Degree Possession.” (The former Column “T”, 3rd Degree Other, is now Column “J”) Addendum B, which categorizes felony offenses, has been updated to include a new categorization of “possession only” offenses that may be considered mitigating.</p> <p>Form 4 (Aggravating and Mitigating Circumstances) now includes an additional mitigating circumstance for drug possession only offenses. Consistent with prior practice, the lists of aggravating and mitigating circumstances are not exhaustive.</p> <p>No changes were made to forms 2 and 3.</p> <p>Pursuant to the commission’s vote at our annual meeting, the possession only offenses were to be considered as a mitigating circumstance. Tom proposed to put number 13 on form 4, under the mitigating. It presently reflects offense was a “possession only” drug offense. Tom asked the commission to look at the code citations in chapter 58 that are also listed as possession only and determine whether or not we are content that these particular offenses are designated as such. Judge Christiansen made the motion to change 58-37-8(2)(b)(i) Possession of Marijuana>100 lbs. to the “other” category. If it is in the “other” category, it cannot be considered as mitigating. Judge Hornak seconded the motion and it passed.</p> <p>Tom also wants to make sure the commission is comfortable with code citation 59-19-106, Illegal drug tax stamp violation, category possession only. Paul Boyden made the motion to change the category on that one to “other”. Judge Orme seconded the motion and it passed unanimously.</p> |

| Agenda Item: | Raising Minimum on Murder- Discussion of present perceptions and parole practices |
|--------------|---|
| Notes: | <p>This has been an issue for a long time, but the Hacking case has brought it into the spotlight again. The reality is that offenders nearly always exceed 15 years incarceration on a 5 year minimum sentence. Public perception of a minimum of 5 years seems not to be enough. Discussion ensued whether or not to change sentencing to be 15 to life and what impact that would have. With our current system, no one has been paroled under 18 years. Mike Sibbett noted that Mr. Hacking will have to wait 30 years to have his first hearing, by rule of the board. It cannot be challenged or appealed. The other option could be to educate the public about the way the sentencing law works. John Hill made the motion to move this topic to the September meeting and observe how the public reacts to the news about Hacking and the 30 years till his</p> |

| | |
|--|---|
| | first hearing. Brian Namba seconded the motion and the motion passed with three no votes to the contrary. |
|--|---|

| Agenda Item: | Sex Offender Registry |
|---------------------|---|
| Notes: | <p>This topic has been brought to our attention because of constituent letters sent to the legislature and the Governor's office. These letters express concern about the offense of sexual battery not being one of the registerable offenses for those who are required to be sex offender registrants. Tom then directed the commission to look at code 76-9-702.(3). Judge Orme suggested that it should be called Unlawful Touching rather than Sexual Battery given the elements of that particular crime. The topic then turned to the voyeurism issue. It is also a crime that is not listed as a sex crime. Recently there was a voyeurism case where an individual was taping women and children without their knowledge in a public restroom. The commission tabled this discussion to the September meeting at which time it will further discuss whether voyeurism should be listed among the sex offenses and whether voyeurism should be a registerable offense. The subject then turned to plea and abeyance, which does not constitute a conviction. There are concerns about persons who have entered a plea and abeyance showing up on the sex offender registry. Chris Mitchell verified that Corrections does not presently include pleas and abeyances in sex cases on the sex offender registry. Mike Sibbett made the motion to reconstitute the Anomalies Committee. Judge Orme seconded the motion and it passed unanimously. Previous members of that subcommittee are: John Hill, Mike Sibbett, Paul Boyden, Chris Mitchell, Curt Gardner and Reed Richards.</p> |

The next meeting is scheduled for Wednesday, September 7, 2005, East Office Bldg. Beehive Room
Minutes prepared by Jo Lynn Kruse - Executive Secretary, CCJJ